

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Banker License of: No. 06F-BD035-BNK

3 **THE NEW YORK MORTGAGE**  
4 **COMPANY, L.L.C. AND STEVEN B.**  
5 **SCHNALL, PRESIDENT**  
14861 North Scottsdale Road, Suite 105  
Scottsdale, AZ 85254

**CONSENT ORDER**

6 Petitioners.  
7

8 On March 6, 2006, the Arizona Department of Financial Institutions ("Department") issued a  
9 Notice of Hearing alleging that Petitioners had violated Arizona law. Wishing to resolve this matter  
10 in lieu of an administrative hearing, Petitioners do not contest the following Findings of Fact and  
11 Conclusions of Law, and consent to the entry of the following Order.

12 **FINDINGS OF FACT**

13 1. Petitioner The New York Mortgage Company, L.L.C. ("NYMC") is a New York  
14 limited liability corporation authorized to transact business in Arizona as a mortgage banker, license  
15 number BK 0905799, within the meaning of A.R.S. §§ 6-941 *et seq.* The nature of NYMC's  
16 business is that of making, negotiating, or offering to make or negotiate a mortgage banking loan or  
17 a mortgage loan secured by Arizona real property within the meaning of A.R.S. § 6-941(5).

18 2. Petitioner Steven B. Schnall ("Mr. Schnall") is the President of NYMC and is  
19 authorized to transact business in Arizona as a mortgage banker within the meaning of A.R.S. § 6-  
20 941(5), as outlined within A.R.S. § 6-943(F).

21 3. An October 25, 2005 examination of NYMC, conducted by the Department, revealed  
22 that NYMC and Mr. Schnall:

- 23 a. failed to obtain branch office licenses from the superintendent before originating  
24 at least thirty (30) mortgage loans on Arizona real property from the following ten  
25 (10) unlicensed locations;

26 ...

- i. (1) 62 Reads Way, New Castle, DE 19720; (2) 5 Bristol Drive, South Easton, MA 02375; (3) 313 Washington Street, Newton, MA 02458; (4) Northfield, NJ; (5) Purchase, NY; (6) Melville, NY; (7) Wakefield, MA; (8) Bedford, NH; (9) Gambrills, MD; and (10) Aventura, FL. The respective locations are now licensed;
- b. failed to conduct the minimum required elements of reasonable employee investigations before hiring at least seventeen (17) employees;
  - i. failed to consult with each applicant's most recent or next most recent employer when hiring seventeen (17) employees;
  - ii. failed to inquire regarding the applicant's qualifications and competence for the position when hiring seventeen (17) employees;
  - iii. failed to obtain credit reports before hiring seventeen (17) employees;
  - iv. failed to obtain a completed employment eligibility verification form "I-9" before hiring three (3) employees; and
  - v. failed to obtain a completed employment eligibility verification form "I-9" when hiring four (4) employees;
- c. failed to maintain complete records and failed to maintain copies of regulatory compliance reviews;
- d. failed to maintain a file for each application for a mortgage banking loan or a mortgage loan containing documents showing the application's final disposition in one (1) loan transaction;
  - i. loan number 303MM507066—the document showing final disposition is missing;
- e. permitted one (1) borrower to sign regulated documents containing blank spaces without first obtaining the proper written authorization from the borrowers to complete the blank spaces;

- 1                   i.    loan number 88-A05010084—the float/lock addendum was signed and not  
2                   reviewed; the settlement services order form was signed in blank;
- 3           f.   failed to comply with the disclosure requirements of Title I of the Consumer  
4           Protection Act (15 U.S.C. §§ 1601-1666j); the Real Estate Settlement Procedures  
5           Act (12 U.S.C. §§ 2601-2617); and the regulations promulgated under these acts  
6           in three (3) loan transactions;
- 7                   i.    loan numbers 327SD050804002 and 317AA506009—the mortgage  
8                   servicing transfer disclosure was incomplete; and
- 9                   ii.   loan number 327SD050707009—the mortgage servicing transfer  
10                  disclosure was missing;
- 11           g.   failed to establish and maintain a sequential listing of checks written for each  
12           bank account that includes: the payee's name, amount, date, and the payment's  
13           purpose;
- 14                   i.    Petitioners' check register was missing the payment's purpose;
- 15           h.   failed to have all parties sign a written fee agreement in connection with mortgage  
16           loan applications in one (1) loan transaction;
- 17                   i.    loan number 88-A04090390—the fee agreement was missing from the file  
18                   and \$169.00 in advance fees were accepted;
- 19           i.   failed to name a qualified entity as trustee on trust deeds;
- 20                   i.    Petitioners named Laura H. Franck, SVP, and Dennis J. O'Donoghue,  
21                   EVP, as trustees on certain Arizona deeds. These individuals do not meet  
22                   any of the qualifications under Arizona law;
- 23                   ii.   several trust deeds were also missing a named trustee entirely;
- 24           j.   failed to provide the Department with documents within a reasonable time;
- 25                   i.    the Department requested original, signed statements from warehouse  
26                   lenders attesting to whether or not Petitioners have handled their credit

1 lines in a satisfactory manner. Petitioners, instead, provided letters from  
2 another examination that were not originals and did not attest as to the  
3 handling of their warehouse credit lines. The warehouse letters were  
4 provided at a later time;

5 k. used an unlawful appraisal disclosure placing a 90-day limit upon borrowers to  
6 request a copy of an appraisal report for which the borrowers had already paid;

7 4. Based upon the above findings, the Department issued and served upon NYMC and  
8 Mr. Schnall an Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of  
9 Order ("Cease and Desist Order") on January 11, 2006.

10 5. On February 9, 2006, Petitioners filed a Request for Hearing to appeal the Cease and  
11 Desist Order.

#### 12 CONCLUSIONS OF LAW

13 1. Pursuant to A.R.S. §§ 6-941, *et seq.*, the Superintendent has the authority and duty to  
14 regulate all persons engaged in the mortgage banker business and with the enforcement of statutes,  
15 rules, and regulations relating to mortgage bankers.

16 2. By the conduct set forth in the Findings of Fact, The New York Mortgage Company,  
17 L.L.C. and Mr. Schnall violated the following:

- 18 a. A.R.S. § 6-944(D) by failing to obtain branch office licenses from the  
19 superintendent before originating at least thirty (30) mortgage loans on Arizona  
20 real property from ten (10) unlicensed locations;
- 21 b. A.R.S. § 6-943(O) and A.A.C. R20-4-102 by failing to conduct the minimum  
22 elements of reasonable employee investigations before hiring employees;
- 23 c. A.R.S. § 6-946(A) and A.A.C. R20-4-1806(B) by failing to maintain complete  
24 records and failing to maintain copies of regulatory compliance reviews;
- 25 d. A.R.S. § 6-946(A) and A.A.C. R20-4-1806(B)(6) by failing to maintain a file for  
26 each application for a mortgage banking loan or a mortgage loan containing

documents showing the application's final disposition;

- e. A.R.S. § 6-947(A) and A.A.C. R20-4-1808 by allowing borrowers to sign regulated documents containing blank spaces without first obtaining proper written authorization from the borrowers to complete the blank spaces;
- f. A.R.S. § 6-946(E) and A.A.C. R20-4-1806(B)(6)(e) by failing to comply with the disclosure requirements of Title I of the Consumer Protection Act (15 U.S.C. §§ 1601-1666j); the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601-2617); and the regulations promulgated under these acts;
- g. A.A.C. R20-4-1806(B)(3)(d) by failing to establish and maintain a sequential listing of checks written for each bank account that includes the payment's purpose;
- h. A.R.S. § 6-946(C) by failing to have all parties sign a written fee agreement in connection with mortgage loan applications;
- i. A.R.S. § 6-945(A)(7) and A.R.S. § 33-803(A) by failing to name a qualified entity as trustee on trust deeds;
- j. A.R.S. § 6-945(A)(3) by failing to provide the Department with documents within a reasonable time; and
- k. A.R.S. § 6-946(C) by using an unlawful appraisal disclosure placing a 90-day limit upon borrowers to request a copy of an appraisal report for which the borrowers had already paid.

3. The violations set forth above constitute grounds for the issuance of an order directing Petitioners to cease and desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts, practices, and transactions, pursuant to A.R.S. § 6-137.

4. The violations set forth above constitute grounds for the imposition of a civil penalty

1 of not more than five thousand dollars (\$5,000.00) for each violation for each day, pursuant to  
2 A.R.S. § 6-132.

3 **ORDER**

4 1. The New York Mortgage Company, L.L.C. and Mr. Schnall shall immediately stop  
5 the violations set forth in the Findings of Fact and Conclusions of Law. The New York Mortgage  
6 Company, L.L.C. and Mr. Schnall:

- 7 a. shall obtain branch office licenses from the superintendent before originating  
8 mortgage loans on Arizona real property at unlicensed locations;  
9 b. shall conduct the minimum elements of reasonable employee investigations  
10 before hiring employees;  
11 c. shall maintain complete records and shall maintain copies of regulatory  
12 compliance reviews;  
13 d. shall maintain a file for each application for a mortgage banking loan or a  
14 mortgage loan containing documents showing the application's final  
15 disposition;  
16 e. shall not allow borrowers to sign regulated documents containing blank spaces  
17 without first obtaining proper written authorization from the borrowers to  
18 complete the blank spaces;  
19 f. shall comply with the disclosure requirements of Title I of the Consumer  
20 Protection Act (15 U.S.C. §§ 1601-1666j); the Real Estate Settlement  
21 Procedures Act (12 U.S.C. §§ 2601-2617); and the regulations promulgated  
22 under these acts;  
23 g. shall establish and maintain a sequential listing of checks written for each  
24 bank account that includes the payment's purpose;  
25 h. shall have all parties sign a written fee agreement in connection with mortgage  
26 loan applications;

- i. shall name a qualified entity as trustee on trust deeds;
- j. shall provide the Department with documents within a reasonable time; and
- k. shall not use an unlawful appraisal disclosure placing a 90-day limit upon borrowers to request a copy of an appraisal report for which the borrowers had already paid.

2. The New York Mortgage Company, L.L.C. and Mr. Schnall shall immediately pay to the Department a civil money penalty in the amount of ten thousand dollars (\$10,000.00). The New York Mortgage Company, L.L.C. and Mr. Schnall are jointly and severally liable for payment of the civil money penalty.

3. The provisions of this Order shall be binding upon Petitioners, their employees, agents, and other persons participating in the conduct of the affairs of Petitioners.

4. This Order shall become effective upon service, and shall remain effective and enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated, or set aside.

SO ORDERED this 3rd day of April, 2006.



Felecia A. Rotellini  
Superintendent of Financial Institutions

#### **CONSENT TO ENTRY OF ORDER**

1. Petitioners acknowledge that they have been served with a copy of the foregoing Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the same, are aware of their right to an administrative hearing in this matter, and have waived the same.

2. Petitioners admit the jurisdiction of the Superintendent and consent to the entry of the foregoing Findings of Fact, Conclusions of Law, and Order.

3. Petitioners state that no promise of any kind or nature has been made to induce them to consent to the entry of this Order, and that they have done so voluntarily.

4. Petitioners acknowledge that the acceptance of this Agreement by the Superintendent is solely to settle this matter and does not preclude this Department, any other agency or officer of this state or subdivision thereof from instituting other proceedings as may be appropriate now or in the future.

5. Steven B. Schnall on behalf of The New York Mortgage Company, L.L.C., and himself, represents that he is the President, and that, as such, has been authorized by The New York Mortgage Company, L.L.C. to consent to the entry of this Order on its behalf.

6. Petitioners waive all rights to seek judicial review or otherwise to challenge or contest the validity of the Cease and Desist Order or Notice of Hearing.

DATED this 29 day of March, 2006.

The New York Mortgage Company, L.L.C.

By Steven B. Schnall, President

ORIGINAL of the foregoing filed this 4th  
day of April, 2006, in the office of:

Felecia A. Rotellini  
Superintendent of Financial Institutions  
Arizona Department of Financial Institutions  
ATTN: June Beckwith  
2910 N. 44th Street, Suite 310  
Phoenix, AZ 85018

COPY mailed same date to:

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Administrative Law Judge  
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11 AND COPY MAILED SAME DATE by  
12 Certified Mail, Return Receipt Requested, to:

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23 951716; CPA06-035